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WASHINGTON DC 20036

MAILED

MAY 11 2010

OFFICE OF PETITIONS

In re Patent No. 7,616,860 : DECISION ON REQUEST FOR
Glassman et al. : RECONSIDERATION OF
Issue Date: November 10, 2009 : PATENT TERM ADJUSTMENT AND
Application No. 10/815,016 : NOTICE OF INTENT TO ISSUE
Filed: March 31, 2004 : CERTIFICATE OF CORRECTION
Atty. Docket No. SONY-06700 :

This is a decision on the petition filed on December 16, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand three hundred forty-eight (1348) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The term of the above-identified patent is extended or adjusted by **eight hundred eighty-seven (887) days**.

Patentee acknowledges 556 days of A delay, 955 days of delay under 37 CFR 1.702(b), 34 days of applicant delay, and a period of overlap between A delay and B delay. However, patentee incorrectly calculated B delay and the overlapping period.

37 CFR 1.703(b) indicates that the period of adjustment under 37 CFR 1.702(b) ("over three year period") is the number of days, if any, in the period beginning on the day after the date that

is three years after the actual filing date of the application and ending on the date a patent was issued. 35 U.S.C. 154(b)(1)(B). However, 37 CFR 1.703(b) also sets forth the limitations on patent term adjustment specified in 35 U.S.C. 154(b)(1)(B)(i) and (ii). Specifically, 37 CFR 1.703(b)(4)¹ provides that the period of adjustment of the term of a patent shall not include the period equal to the sum of the period of pendency consumed by appellate review under 35 U.S.C. 134, 141, 145, whether successful or unsuccessful (35 U.S.C. 154(b)(1)(B)(ii)).

The Office agrees with patentee that the "over three year period" is 955 days. However, patentee failed to account for the filing of the notices of appeal on July 12, 2007, and October 21, 2008. The Office reminds patentee that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the total period consumed by appellate review is 547 days (355 days beginning on the date on which the first notice of appeal was filed, July 12, 2007, and ending on the date of the mailing of the final Office action, June 30, 2008, plus 192 days beginning on the date on which the second notice of appeal was filed, October 21, 2008, and ending on the date of the mailing of the notice of allowance, April 30, 2009). Thus, B delay is 408 days (955 - 547).

Furthermore, the Office has determined that the overlapping period between A delay and B delay is 43 (not 129) days.

Accordingly, the patent term adjustment is 887 days (556 days of A delay + 408 days of B delay - 43 days of overlap - 34 days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a

¹ The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, **whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.** 37 CFR 1.703(b) (emphasis added).

certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges the submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fee is due.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **eight hundred eighty-seven (887) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

C. F. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT: 7,616,860 B2
DATED: Nov. 10, 2009
INVENTOR(S): Glassman et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 921 days

Delete the phrase "by 921 days" and insert – by 887 days--

Day : Monday
Date : 5/10/2010

PALM INTRANET

Time: 13:04:49

PTA Calculations for Application: 10/815016

Application Filing Date:	03/31/2004	PTO Delay (PTO):	955
Issue Date of Patent:	11/10/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	34
Post-Issue Petitions:	0	Total PTA (days):	887
PTO Delay Adjustment:	-34		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
81	05/10/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		34	
77.5	10/21/2009	PTA 36 MONTHS	399		
77	11/10/2009	PATENT ISSUE DATE USED IN PTA CALCULATION			
76	10/15/2009	EXPORT TO FINAL DATA CAPTURE			
75	10/14/2009	DISPATCH TO FDC			
74	10/08/2009	MAIL-PETITION DECISION - DISMISSED			
73	10/08/2009	PETITION DECISION - DISMISSED			
72	07/29/2009	RESPONSE TO REASONS FOR ALLOWANCE			
71	08/04/2009	APPLICATION IS CONSIDERED READY FOR ISSUE			
70	07/29/2009	ISSUE FEE PAYMENT VERIFIED			
69	07/29/2009	ISSUE FEE PAYMENT RECEIVED			
68	07/10/2009	PETITION ENTERED			
67	06/04/2009	FINISHED INITIAL DATA CAPTURE			
66	05/05/2009	EXPORT TO INITIAL DATA CAPTURE			
65	04/30/2009	MAIL NOTICE OF ALLOWANCE	43		53
64	04/28/2009	ISSUE REVISION COMPLETED			
63	04/28/2009	DOCUMENT VERIFICATION			
62	04/27/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
61	04/27/2009	NOTICE OF ALLOWABILITY			
60	01/29/2009	APPEAL BRIEF REVIEW COMPLETE			
59	01/29/2009	DATE FORWARDED TO EXAMINER			
58	12/15/2008	APPEAL BRIEF FILED			
57	12/17/2008	REQUEST FOR REFUND			
56	12/10/2008	NOTICE -- DEFECTIVE APPEAL BRIEF			

55	12/05/2008	APPEAL BRIEF REVIEW COMPLETE			
54	12/05/2008	DATE FORWARDED TO EXAMINER			
53.1	11/18/2008	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
53	11/18/2008	APPEAL BRIEF FILED			
52	10/21/2008	NOTICE OF APPEAL FILED		21	45
51	10/21/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
50	10/02/2008	MAIL ADVISORY ACTION (PTOL - 303)			
49	09/29/2008	ADVISORY ACTION (PTOL-303)			
47	09/05/2008	DATE FORWARDED TO EXAMINER			
46	08/29/2008	AMENDMENT AFTER FINAL REJECTION			
45	06/30/2008	MAIL FINAL REJECTION (PTOL - 326)			
44	06/23/2008	FINAL REJECTION			
43	04/14/2008	DATE FORWARDED TO EXAMINER			
42	03/11/2008	RESPONSE AFTER NON-FINAL ACTION			
41	12/13/2007	MAIL NON-FINAL REJECTION	86		30
40	12/10/2007	NON-FINAL REJECTION			
39	09/25/2007	DATE FORWARDED TO EXAMINER			
38	09/25/2007	MAIL APPEALS CONF. REOPEN PROSEC.			
37	09/18/2007	PRE-APPEALS CONFERENCE DECISION - REOPEN PROSECUTION			
36	07/12/2007	REQUEST FOR PRE-APPEAL CONFERENCE FILED			
35	07/12/2007	NOTICE OF APPEAL FILED			
34	07/12/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
33	06/11/2007	MAIL ADVISORY ACTION (PTOL - 303)			
32	06/07/2007	ADVISORY ACTION (PTOL-303)			
31	05/25/2007	DATE FORWARDED TO EXAMINER			
30	05/18/2007	AMENDMENT AFTER FINAL REJECTION		6	28
29	05/18/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
28	02/12/2007	MAIL FINAL REJECTION (PTOL - 326)			
27	02/05/2007	FINAL REJECTION			
26	11/25/2006	DATE FORWARDED TO EXAMINER			
25	11/08/2006	RESPONSE AFTER NON-FINAL ACTION		7	23
24	11/08/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			

23	08/01/2006	MAIL NON-FINAL REJECTION	427		-1
22	07/24/2006	NON-FINAL REJECTION			
21	02/01/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
20	07/11/2006	CASE DOCKETED TO EXAMINER IN GAU			
19	03/14/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
18	02/01/2005	REFERENCE CAPTURE ON IDS			
17.7	02/01/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	02/01/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	06/08/2005	CORRESPONDENCE ADDRESS CHANGE			
15	06/08/2005	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
14	09/08/2004	APPLICATION RETURN FROM OIPE			
13	09/08/2004	APPLICATION RETURN TO OIPE			
12	09/02/2004	APPLICATION DISPATCHED FROM OIPE			
11	09/02/2004	APPLICATION IS NOW COMPLETE			
10	08/09/2004	ADDITIONAL APPLICATION FILING FEES			
9	08/09/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
8	08/09/2004	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
7	06/14/2004	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			
5	05/07/2004	CLEARED BY L&R (LARS)			
4	04/30/2004	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
3	04/30/2004	CASE CLASSIFIED BY OIPE			
2	04/08/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	03/31/2004	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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